

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

PAUL M. DEAN, JR.

V.

**JO ANNE BARNHART,
Commissioner of Social Security
Administration**

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§
§

NO. 1:04-CV-14

**MEMORANDUM ORDER OVERRULING OBJECTIONS
AND ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The court heretofore ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge submitted a Report and Recommendation which recommends that the court affirm the Commissioner's decision and dismiss this case.

Plaintiff filed timely objections to the magistrate judge's Report and Recommendation. This entitles plaintiff to a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

The court has received and considered the record, pleadings, and all available evidence. After careful consideration, the court concludes that the magistrate judge correctly determined that substantial evidence supports the Administrative Law Judge's determination that plaintiff can perform alternative work. Substantial evidence of record indicates that plaintiff's sleep apnea is successfully treated with "continuous positive airway pressure," or CPAP. Moreover, the record

fails to prove plaintiff's allegations that he cannot remain awake during the day. Consequently, plaintiff's objections are without merit.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered, affirming the Commissioner's decision and dismissing this case.

So **ORDERED** and **SIGNED** this **27** day of **July, 2005**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge